

COUNTRYMAN & McDANIEL

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HAAS INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

ONE BEACON INSURANCE COMPANY,)	CASE NO. 3:07-CV-03540-BZ
a corporation,)	
)	SUPPLEMENTAL BRIEF REQUESTED
Plaintiff,)	BY MAGISTRATE JUDGE ZIMMERMAN
)	REGARDING ISSUE OF
vs.)	STANDING/REAL PARTY IN
)	INTEREST
HAAS INDUSTRIES, INC., a)	
corporation,)	Date: April 8, 2008
)	Time: On Submission
Defendants.)	

Defendant Haas Industries, Inc.'s Thirteenth Affirmative Defense is that "... One Beacon is not a real party in interest."

A real party in interest is one who "by the substantive law, possesses the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery." *People of the State of Illinois v. Life of Mid-America Insurance Co.*, 805 Fed.2d 763, 764 (7th Cir. 1986), citing C. Wright, Law of Federal Courts, section 70.

The substantive law in this case is the Carmack Amendment,

1 section 14706(a)(1) of which exclusively provides that motor
2 carriers and freight forwarders are liable to only "the person
3 entitled to recovery under the . . . bill of lading."
4

5 Proper plaintiffs are those "to whom the carrier owes a duty
6 to transport an item . . ." *Polesuk v. CBR Systems, Inc.*, 2006 WL
7 2796789 (S.D.N.Y. 2006). The relation creating such duty arises
8 out of the bill of lading, and proper parties to bring a Carmack
9 action are the parties named in the bill of lading. *Windows, Inc.*
10 *v. Jordan Panel Systems, Corp.*, 177 F.3d 114, 118 (2d Cir. 1999)
11 ("Suits under the Carmack Amendment may be brought against a
12 carrier by any person entitled to recover in the carrier's 'bill of
13 lading,' . . .") (emphasis added).
14

15 One Beacon's insured is Professional Products, Inc. ("PPI").
16 Maus declaration and attached Exhibit. One Beacon stands in the
17 shoes of PPI, and has no greater right to bring an action or of
18 recovery than PPI possesses. PPI is not named in, nor was a party
19 to, Haas' bill of lading, and so was owed no duty by Haas and has
20 no right of recovery against Haas.
21

22 Haas recognizes the potential that a claim may be assigned or
23 a filing ratified. However, here there has been an accord and
24 satisfaction of Omneon's claim. Haas has paid its "maximum
25 liability" for the claim to Omneon and so Omneon's claim is
26 extinguished. Opposition, Point V, pages 9-10, and Holster
27 declaration, paragraph 9 and Exhibit "H." Whatever Omneon may have
28 had to assign no longer exists because of the accord and

1 satisfaction.

2

3 Dated: April 8, 2008

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By:



GEOFFREY W. GILL

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Attorneys for defendant

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HAAS INDUSTRIES, INC.

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